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David J. Gaskey CARLSON, GASKEY & OLDS, P.C. Suite 350 400 West Maple Road Birmingham, MI 48009			TRAN, KHOI H	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/853,339
Filing Date: May 11, 2001
Appellant(s): FARGO ET AL.

Theodore W. Olds
400 W. Maple, Suite 350
Birmingham, MI 48009
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/01/2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the grounds to be reviewed on Appeal in the brief is correct.

(7) *Argument*

Appellant's arguments are hereby acknowledged and considered.

(8) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Evidence Appendix*

None.

(10) Related Proceeding Appendix

The appellant's statement of related proceeding appendix is correct. Appeal No. 2004-0389 relates to the subject RCE application and a copy of the decision from the Board of Patent Appeals and Interference is attached.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 14 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose the escalator machine being covered entirely (on all sides, not just on both sides) by the steel sheet modules.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "other portions of the rise" lacks antecedent basis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 14, and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gschwendtner '6,374,981.

Gschwendtner '981 discloses an escalator support structure per claimed invention. The support structure comprises a top and bottom landing supports (Figures 1-3). The top and landing supports are connected via a rise (Figure 3). The rise includes at least one module of steel plate wall. Said wall comprises a top edge, a bottom edge, and two side edges (Figures 3 and/or 8). Said wall provides a generally planar exterior surface from said top edge to said bottom edge and between said side edges. However, Gschwendtner '981 is silent as to the specifics of the wall being continuous, unbroken, and the steel plate could be welded to other portions of the rise along the edges of said steel plate. Gschwendtner Figure 1 does show a continuous, unbroken coverage extends the entire one side of the escalator support structure.

In the Drawing Descriptions of column 2, Gschwendtner '981 indicated that the wall plate in Figure 8 has a solid plate mode of construction. In column 3, lines 44-46 Gschwendtner '981 indicated that screw connections could also be replaced by means of welds.

Gleaning from Gschwendtner '981 suggestive desires above, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have made Gschwendtner '981 wall module from a solid plate and welded said plate, along the edges thereof, onto portions of the rise because it facilitates another attachment means for a solid plate wall.

In regards to claim 27, Gschwendtner '981 rise comprises plurality of support sub-modules (Figure 2). The reversed N-shaped support sections are interpreted as support sub-modules.

In regards to claim 28, it is obvious that one edge of Gschwendtner '981 steel plate is attached to a first one of the support sub-modules and a second one of the side edges is attached to a second one of the support sub-modules so that the entire rise can be covered as shown in Figure 1.

In regards to claim 29, it is obvious that the first and second edges of the steel plate are welded to the first and second sub-module as indicated above. Providing welding attachment to replace bolt attachment is contemplated in Gschwendtner '981.

In regards to claim 30, Gschwendtner '981 wall covers the entire one side of the escalator drive machine (Figure 2).

In regards to claim 31, Gschwendtner '981 support sub-modules provide a rigid framework.

7. Claims 1, 14, 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kneipp 2,936,872 in view of Gschwendtner '6,374,981.

Kneipp '872 discloses an escalator support structure per claimed invention. The support structure comprises a top and bottom landing supports (Figure 1). The top and landing supports are connected via a rise (Figures 1 and 2). The rise includes at least one module, wall panel 10 or 11. Said wall panel 10 or 11 comprises a top edge, a bottom edge, and two side edges (Figure 2). Said wall panel 10 or 11 provides a continuous, unbroken and generally planar exterior surface from said top edge to said bottom edge and between said side edges. However, Kneipp '872 is silent as to the specific of the wall panels being made from steel sheet.

Gschwendtner '981 discloses an escalator support structure. Gschwendtner '981 support structure comprises steel sheet wall that connects the top landing support to the bottom landing support. Gschwendtner '981 shows that making wall panel from steel sheet is commonly well known within the art.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have made Kneipp '872 wall panels out of steel sheets because it facilitates commonly well known material choice for wall panels, as demonstrated by Gschwendtner '981. Also, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have made Kneipp '872 wall panels 10 and 11 out of steel sheets, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design. In re Leshin, 125 USPQ 416.

In regards to claims 27, 28, 30, and 31, Kneipp '872 rise comprises plurality of support sub-modules 9. Each of said sub-modules comprises attachment means 14 for

attaching the edges of plurality of wall panels 10/11 together (Figures 1 and 2). The panels are attached so that the entire lateral side of the rise is covered.

In regards to claims 14 and 29, Kneipp '872 discloses all elements per claimed invention as explained above. However, it is silent as to the specifics of the wall panels being welded to the support sub-modules.

Gschwendtner '981, as described above, teaches that welding is another means for attaching steel plates onto supporting structures.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have welded Kneipp '872 wall plates onto the support sub-modules because it facilitates another way to attach the wall plates onto portions of the rise, as taught by Gschwendtner '981.

(11) Response to Argument

A. Obviousness Rejection over Gschwendtner 6, 374,981 :

Appellant argued that the "cladding" in Gschwendtner '981 is not a support structure assembly for an escalator. This argument is not persuasive. Gschwendtner '981 structures anticipate the claimed elements as explained above. Hence, Gschwendtner '981 comprises support structure for an escalator.

In response to appellant's argument that there is no suggestion to modify Gschwendtner to provide for a continuous unbroken exterior surface plate from a solid steel plate, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, it is the teaching that screw connections could be replaced by welding means that provides the motivation of using solid plate having continuous unbroken surface. It is obvious that the welding process will eliminate bolt or screw openings within the solid steel plates. See also the interpretation of Gschwendtner '981 continuous planar surface (page 6 of Board of Appeal No. 2004-0389 relates to the subject RCE application).

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

In regards to Appellant's argument concerning claims 14 and 30, these claims have been rejected under 35 U.S.C. 112, First Paragraph because Appellant's steel sheets do not cover "the entire escalator machine".

Appellant argued that Gschwendtner '981 does not contain plurality of support sub-modules. This argument is not persuasive. The mere citation of "sub-modules" does not set forth the distinction of the claimed elements over Gschwendtner '981.

Gschwendtner '981, as explained above, structurally anticipates the invention as claimed by Appellant.

Appellant argued the Gschwendtner '981 N-shaped support sections/sub-modules do not have side edges. This argument is not persuasive. Appellant's attention is directed to Figures 1 and 2 of Gschwendtner '981. Figures 1 and 2 of Gschwendtner '981 show that Gschwendtner '981 structures do have side edges. Figure 2 is a side edge view of the sub-modules.

Appellant argued that Gschwendtner '981 support structure does not cover an escalator drive machine. This argument is not persuasive. In the absent of specific definition of an "escalator drive machine", any elements that drives the escalator (e.g. conveying plates or steps) can be interpreted as being an escalator drive machine. Hence, Gschwendtner '981 support structure does cover the escalator drive machine (see pages 7-8, Appeal No. 2004-0389 relates to the subject RCE application).

**B. Obviousness Rejection of Kneipp 2,936,872 as Modified by
Gschwendtner 6,374,981:**

Appellant argued that Kneipp '872 panels do not constitute part of the claimed support structure. This argument is not persuasive. Kneipp '872 panels anticipate the claimed elements and are interpreted as being part of the support structure.

Appellant argued that the modification of providing steel sheets to Kneipp '872 would render Kneipp '872 unsatisfactory because Kneipp '872 goal is to construct an escalator with a low weight. This argument is not persuasive. Even though Kneipp '872

desire is to provide a low weight escalator structure, Kneipp '872 has not explicitly excluded steel from being the material of construction. Steel is a common material choice for escalator constructions as shown by Gschwendtner '981. In addition, Appellant has purposely chosen to ignore the possibility that for the same structural integrity, steel is much lighter than glass or marble. Hence, using steel sheets certainly conforms to Kneipp '872 goal of providing a lightweight escalator.

Appellant argued that modifying Kneipp '872 with Gschwendtner '981 would yield steel sheets with openings 22, as shown in Gschwendtner '981 Figure 8. This argument is not persuasive. The motivation for combining Kneipp '872 and Gschwendtner '981, as indicated in the respective paragraphs above, does not stem from the motivation as to how the references are structurally combinable. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this instant case, it is the combined teachings of welding steel sheets together to form an escalator support structure that provides the motivation to combine the references.

Appellant argued that Kneipp '872 does not have plurality of sub-modules. This argument is not persuasive. Each of Kneipp '872 modules 10 or 11 is attached to the escalator structure via attachment section 14 and a horizontal plate section (Figure 2). Each of the module and the respective attachment sections constitutes a sub-module.

Appellant argued that Kneipp '872 support structure does not cover an escalator drive machine. This argument is not persuasive. In the absent of specific definition of an "escalator drive machine", any elements that drives the escalator (e.g. conveying plates or steps) can be interpreted as being an escalator drive machine. Hence, Kneipp '872 support structure does cover the escalator drive machine (see pages 7-8, Appeal No. 2004-0389 relates to the subject RCE application).

C. 35 U.S.C. 112, First Paragraph, Rejection :

Appellant argued that since the specification does not disclose the escalator machine being covered entirely by the steel sheet modules, the Office should interpret the term "entire escalator machine" as being only an "entire side of the escalator machine". This argument is not persuasive. The term "entire", per online Oxford English Dictionary, means "...with no part left out...". Hence, the "entire" escalator machine cannot and must not be interpreted as being only an "entire side". Since there is no support for the escalator machine being covered for the "entire escalator machine", claims 14 and 30 have been rejected under 35 U.S.C. 112, First Paragraph, as being non-enabling.

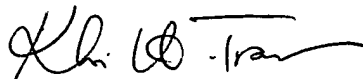
Art Unit: 3651

(8) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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